

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #1	CCRB Case #: 201802215	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/15/2018 7:30 PM, Friday, 03/16/2018	Location of Incident: § 87(2)(b) [REDACTED] Inside of the 73rd Precinct Stationhouse	Precinct: 73	18 Mo. SOL 9/15/2019	EO SOL 9/15/2019	
Date/Time CV Reported Fri, 03/16/2018 12:39 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/21/2018 11:01 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Rafael Figueroa	25243	948336	073 PCT
2. Officers			Unknown
3. An officer			Unknown
4. POM George Allen	06387	944517	073 PCT
5. SGT John McGivney	00851	942162	INT CIS
6. CPT Alison Esposito	00000	920258	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Kalish	10483	949156	ESU CAN
2. POF Ruth Donald	18920	962368	073 PCT
3. LT Jeremy Pohl	00000	948405	073 PCT
4. POM Christophe Furegno	12784	934891	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Alison Esposito	Abuse: Captain Alison Esposito entered § 87(2)(b) [REDACTED] in Brooklyn.	[REDACTED]
B. Officers	Abuse: Officers searched § 87(2)(b) [REDACTED] in Brooklyn.	[REDACTED]
C.POM George Allen	Abuse: Inside of § 87(2)(b) [REDACTED] in Brooklyn, Police Officer George Allen took a photograph of § 87(2)(b) [REDACTED]	[REDACTED]
D.SGT John McGivney	Abuse: Inside of § 87(2)(b) [REDACTED] in Brooklyn, Sergeant John McGivney refused to show the search warrant to § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
E.CPT Alison Esposito	Discourtesy: Inside of § 87(2)(b) § 87(2)(b) in Brooklyn, Captain Alison Esposito spoke discourteously to § 87(2)(b)	
F.POM Rafael Figueroa	Discourtesy: Inside of the 73rd Precinct Stationhouse, Police Officer Rafael Figueroa spoke discourteously to § 87(2)(b)	
G. Officers	Force: Inside of the 73rd Precinct Stationhouse, officers used physical force against § 87(2)(b)	
H. An officer	Discourtesy: Inside of the 73rd Precinct Stationhouse, an officer spoke discourteously to § 87(2)(b)	

### Case Summary

On March 16, 2018, § 87(2)(b) called the IAB Command Center and filed this complaint on behalf of § 87(2)(b) and § 87(2)(b). Log #2018-10633 was generated and was received at the CCRB on March 21, 2018.

On March 15, 2018, at approximately 7:30pm, Cpt. Alison Esposito, and officers from Emergency Services Units and the 73<sup>rd</sup> Precinct Field Intelligence Officer entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn, pursuant to Search Warrant § 87(2)(b) **(Allegations A and B: Abuse of Authority- § 87(2)(g))**. Once inside, PO George Allen allegedly took a photograph of § 87(2)(b) **(Allegation C: Abuse of Authority- § 87(2)(g))**. § 87(2)(b) asked to see the search warrant and Sgt. McGivney, who was in possession of the warrant, allegedly refused to show it **(Allegation D: Abuse of Authority- § 87(2)(g))**. Cpt. Esposito allegedly stated, “I’m the head bitch in charge” **(Allegation E: Discourtesy- § 87(2)(g))**. § 87(2)(b) and three other individuals were arrested. Back at the 73<sup>rd</sup> Precinct stationhouse, PO Rafael Figueroa allegedly called § 87(2)(b) s charges “bullshit” **(Allegation F: Discourtesy- § 87(2)(g))**. While § 87(2)(b) was at the stationhouse, unidentified officers pushed him into a wall and back into his holding cell and told him to “shut the fuck up” **(Allegation G and H: Force and Discourtesy- § 87(2)(g))**.

No video footage of this incident was identified.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Captain Alison Esposito entered § 87(2)(b) § 87(2)(b) in Brooklyn.**

**Allegation (B) Abuse of Authority: Officers searched § 87(2)(b) § 87(2)(b) in Brooklyn.**

It is undisputed that officers, including Cpt. Esposito, entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn. § 87(2)(b) is also known as § 87(2)(b) § 87(2)(b).

It is undisputed that Cpt. Esposito was the highest ranked officer on scene and was supervising the entry. Thus, the entry allegation is pled against her.

§ 87(2)(b) testified that on March 15, 2018, he, § 87(2)(b) and § 87(2)(b) were seated inside of § 87(2)(b) § 87(2)(b) in Brooklyn. Suddenly, five officers in tactical uniforms entered the apartment. They had their guns pointed at the individuals. All the civilians got onto the ground and handcuffed them. The tactical uniformed officers then left and plainclothes officers entered the apartment. They stood up all the individuals, frisked them, searched their pockets, then placed them on the couch. The officers then searched the apartment. All four civilians were arrested (Board Review 01).

Search Warrant #§ 87(2)(b) was signed by the § 87(2)(b) on § 87(2)(b). It permits the entry and search of § 87(2)(b) § 87(2)(b) in Brooklyn without prior notice or authority (“No-Knock”). It states that there is probable cause of the presence of

narcotics. The warrant was requested by PO Christopher Furegno, of the 73<sup>rd</sup> Precinct (Board Review 02).

All officers interviewed were consistent that they entered the apartment pursuant to the obtained search warrant. They also testified that all actions once inside were pursuant to the authorization of the search warrant (Board Review 03, 04, 05, and 06).

A police officer, to whom a search warrant is addressed, may execute it pursuant to its terms within ten days of when the search warrant is issued. New York State Criminal Procedure Law, Section 690.50 (Board Review 07). NYPD Patrol Guide, Procedure 221-17 (Board Review 08).

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Inside of § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer George Allen took a photograph of § 87(2)(b)**

**Allegation (D) Abuse of Authority: Inside of § 87(2)(b) § 87(2)(b) in Brooklyn, Sergeant John McGivney refused to show the search warrant to § 87(2)(b)**

**Allegation (E) Discourtesy: Inside of § 87(2)(b) § 87(2)(b) in Brooklyn, Captain Alison Esposito spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that while he was seated on the couch, PO Allen took out a small silver digital camera and appeared to take a photograph of the four civilians seated on the couch. During that same time, § 87(2)(b) asked to see a search warrant. No officer showed it to him. While still seated on the couch, § 87(2)(b) attempted to reach for his cellphone which was on the coffee table. Cpt. Esposito told him not to touch anything then told him, “I’m the head bitch in charge” (Board Review 01).

§ 87(2)(b), § 87(2)(g), § 87(2)(e)

Soon after Sgt. McGivney entered the apartment, § 87(2)(b) who was cursing at the officers, asked to see a copy of the warrant. Sgt. McGivney walked over and held the warrant in front of § 87(2)(b) then stated that he did not want to see the warrant. At this point, § 87(2)(b) had already seen it. Sgt. McGivney testified that he also left a copy of the warrant in the apartment. Sgt. McGivney testified that, typically, when contraband is recovered inside an apartment, officers will photograph the contraband where it is found. This is for evidence purposes. He could not recall if that occurred during this incident. Sgt. McGivney testified that there was contraband found on a table approximately three feet in front of the couch. He did not know if photographs of that contraband were taken while the civilians were seated on the couch. Sgt. McGivney testified that when Cpt. Esposito entered the apartment, § 87(2)(b) asked her “You the head bitch in charge?” Cpt. Esposito replied that she was in charge. She did not state, “I’m the head bitch in charge” (Board Review 04).

Cpt. Esposito testified that when she entered the apartment, § 87(2)(b) was yelling that he was going to sue the officers. Cpt. Esposito denied stating “I’m the head bitch in charge.” She also denied hearing § 87(2)(b) ask if she was. Cpt. Esposito could not recall if § 87(2)(b) asked to see a search warrant. She believed that Sgt. McGivney had a copy. She did not see Sgt. McGivney refuse to show the warrant to § 87(2)(b). Nor did she see if he left one behind. Cpt. Esposito testified that commonly, contraband that is recovered is photographed. She testified that she could not recall if that happened in this instance nor whether contraband was recovered near the couch. She denied that photographs of the civilians were taken (Board Review 05).

PO Allen denied taking any photographs of any of the civilians inside of the apartment. He denied taking any photographs at all while inside the apartment, whether of contraband or otherwise (Board Review 06).

§ 87(2)(b), § 87(2)(g)

**Allegation (F) Discourtesy: Inside of the 73rd Precinct Stationhouse, Police Officer Rafael Figueroa spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that, at the 73<sup>rd</sup> Precinct stationhouse, PO Figueroa, his arresting officer, took § 87(2)(b) to be fingerprinted. PO Figueroa told § 87(2)(b) that there had been a search warrant and that a switch blade and a scale had been recovered. He then described what was found as “bullshit, nothing to worry about” (Board Review 01).

PO Figueroa testified that he was assigned to be the arresting officer following the search warrant execution. He testified that, once back at the stationhouse, he fingerprinted § 87(2)(b). He denied describing § 87(2)(b)'s charges as “bullshit” (Board Review 03).

§ 87(2)(b), § 87(2)(g)

**Allegation (G) Force: Inside of the 73rd Precinct Stationhouse, officers used physical force against § 87(2)(b)**

**Allegation (H) Discourtesy: Inside of the 73rd Precinct Stationhouse, an officer spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that, after being fingerprinted he was taken back to the holding cells. There, he fell asleep until approximately 6:30am the following morning. An unidentified officer woke him up and led him out of the cell. The officer then shackled his legs. The officer told § 87(2)(b) that he had to remove his earrings. § 87(2)(b) asked why and that no other officer had told him to do so. The officer then pushed § 87(2)(b) against a wall in the holding cell room. § 87(2)(b) asked the officer why he was giving him a hard time. The officer told § 87(2)(b) to “shut the fuck up.” The officer then pushed § 87(2)(b) to his right causing him to fall to the ground. § 87(2)(b) was then lifted and walked back to

the holding cell. After 10-15 minutes, § 87(2)(b) was handcuffed and brought out of the cell again. The officer that had pushed § 87(2)(b) prior approached him and asked him why he was being a tough guy. § 87(2)(b) told the officer to get out of his face. The officer then pushed § 87(2)(b) into the wall again. Another unidentified officer then grabbed § 87(2)(b) and pulled him into the holding cell. § 87(2)(b) fell and landed on his back, where he remained. § 87(2)(b) did not suffer any injuries as a result of this incident. § 87(2)(b) was later transported to Central Bookings by different officers (Board Review 01).

During § 87(2)(b)'s sworn statement, provided on May 10, 2018, he described the first unidentified officer as male, black, 5'6'' tall, average build, late 20s, blue uniform. He described the second officer as male, black, 6'0'' tall, chunky build, late 20s, in uniform.

Tour 1 and Tour 2 roll calls from the 73<sup>rd</sup> Precinct on March 16, 2018, show no black male officers assigned to stationhouse assignments (Board Review 09).

An NYPD BADS search was conducted and indicated that no male black officers had arrests in the 73<sup>rd</sup> Precinct during the early morning of March 16, 2018. Of the two arrests that did occur during that timeframe, neither of the officers' partners are black males either (Board Review 19).

TRI § 87(2)(b) were filled out by Lt. Jeremy Pohl. They list no force used against either § 87(2)(b) or § 87(2)(b). They also list no subject officers (Board Review 10).

IAB Log #2018-10633 was generated regarding § 87(2)(b)'s allegation on behalf of § 87(2)(b) and § 87(2)(b). The Log indicates that § 87(2)(b) called them at 12:39pm and reported that § 87(2)(b) had called her and informed her that officers had used force against him (Board Review 20).

A request for stationhouse footage was submitted and the investigation was informed that, at the time, the 73<sup>rd</sup> Precinct did not have operational video cameras (Board Review 21).

Lt. Pohl testified that he was on the supervisor's desk at the 73<sup>rd</sup> Precinct when he got a call at 1:00pm from IAB. The IAB officer stated that force had been alleged by a prisoner. Lt. Pohl was not sure what the alleged force was nor when it occurred. A short while later, EMTs arrived. Lt. Pohl remained on the desk while the EMTs interacted with § 87(2)(b) and § 87(2)(b). Both prisoners refused medical attention. Lt. Pohl didn't observe any disturbance involving § 87(2)(b) or § 87(2)(b) and was never made aware of such by anyone other than IAB. Lt. Pohl filled out a TRI report because force had been alleged. Lt. Pohl denied observing any officer use physical force against § 87(2)(b) or use any profanity in speaking to § 87(2)(b) (Board Review 11).

None of the officers interviewed could recall there being any issues with § 87(2)(b). All officers interviewed denied using force against § 87(2)(b) and denied seeing any officer do so. They also denied using any profanity with § 87(2)(b) and denied hearing any other officer do so. Other than Lt. Pohl, no officer was made aware of these allegations at the time (Board Review 03, 04, 05, 06, and 12).

§ 87(2)(b) was only able to provide a generic description of the subject officers for these allegations. Further, police documents did not identify any subject officer. § 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
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- Cpt. Esposito has been a member-of-service for 21 years and has been a subject in six CCRB complaints and 17 allegations, none of which were substantiated. § 87(2)(g)
- Sgt. McGivney has been a member-of-service for 12 years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated. Sgt. § 87(2)(g)
- PO Allen has been a member-of-service for 11 years and has been a subject in nine CCRB complaints and 18 allegations, two of which were substantiated:
  - Case 201209362 involved a substantiated allegation of question against PO Allen. The Board recommended charges any the NYPD imposed no penalty.
  - Case 201604051 involved a substantiated allegation of frisk against PO Allen. The Board recommended Command Discipline A and the NYPD imposed Formalized Training.
  - § 87(2)(g)
- PO Figueroa has been a member-of-service for nine years and has been a subject in nine CCRB complaints and 16 allegations, of which two were substantiated:
  - Case 201110498 involved substantiated allegations of stop and question against PO Figueroa. The Board recommended charges and the NYPD imposed no disciplinary action.
  - § 87(2)(g)

- This complaint was not suitable for mediation.
- As of February 5, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 16).
- § 87(2)(b)

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_